

**MAY 29 2003**

Holland v. Barnhart, No. 01-57253  
O'SCANNLAIN, Circuit Judge, dissenting.

**CATHY A. CATTERSON**  
**U.S. COURT OF APPEALS**

I must respectfully dissent from the decision to reverse the district court and to award disability benefits. The Commissioner's decision to deny benefits may be overturned "only if it is not supported by substantial evidence." Morgan v. Apfel, 169 F.3d 595, 599 (9th Cir. 1999). Substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a decision." Id. Where the evidence is susceptible to more than one rational interpretation, it is the ALJ's conclusion that must be upheld. Id.; see also

Reddick v. Chater, 157 F.3d 715, 720-21 (9th Cir. 1998) ("If the evidence can reasonably support either affirming or reversing the Secretary's conclusion, the court may not substitute its judgment for that of the Secretary.").

First, the ALJ found that the work restrictions assessments proffered by Holland's treating physicians were inconsistent with the medical evidence. The ALJ may only reject a treating physician's opinion for clear and convincing reasons. Holohan v. Massanari, 246 F.3d 1195, 1202 (9th Cir. 2001). The ALJ, however, need not accept a treating physician's opinion that is brief, conclusory, and unsubstantiated by objective medical evidence. Johnson v. Shalala, 60 F.3d 1428, 1432 (9th Cir. 1995). Here, the ALJ articulated concrete, specific reasons

for rejecting the work restrictions assessments as “extreme,” finding that the medical records documented only conservative treatment, that the clinical findings demonstrated only mildly abnormal evidence of denervation, and there was record evidence of only a mild central disc bulge. The ALJ was therefore entitled to reject the treating physicians’ work restrictions assessments because they were unsubstantiated by objective medical evidence. Johnson, 60 F.3d at 1432.

Second, the ALJ discounted Holland’s subjective pain testimony. To do so, the ALJ must provide “specific, cogent reasons for the disbelief.” Lester v. Chater, 81 F.3d 821, 834 (9th Cir. 1995). “[T]he Commissioner’s reasons for rejecting the claimant’s testimony must be clear and convincing.” Morgan, 169 F.3d at 599. Here, the ALJ found that Holland’s allegations of total disability were inconsistent with her daily activities. See Bunnell v. Sullivan, 947 F.2d 341, 346 (9th Cir. 1991) (“If the claimant engages in numerous daily activities involving skills that could be transferred to the workplace, an adjudicator may discredit the claimant’s allegations upon making specific findings relating to the claimant’s daily activities.”). “It may well be that a different judge, evaluating the same evidence, would have found [the] allegations . . . credible.” Fair v. Bowen, 885 F.2d 597, 604 (9th Cir. 1989). This ALJ did not.

Accordingly, I respectfully dissent.